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HOUSE BILL 720

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; AMENDING THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT TO ALLOW FOR ADDITIONAL SURETIES TO GUARANTEE PERFORMANCE; AMENDING THE PROCUREMENT CODE TO CLARIFY THAT CERTAIN CONTRACTS MAY PROVIDE FOR BOTH DESIGN AND INSTALLATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-23-4 NMSA 1978 (being Laws 1993, Chapter 231, Section 4, as amended) is amended to read:

"6-23-4. GUARANTEED UTILITY SAVINGS CONTRACT-- PERFORMANCE [BOND] GUARANTEE REQUIRED.-- A governmental unit shall not enter into a guaranteed utility savings contract unless a performance [bond] guarantee that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that [bond] guarantee becomes binding on the parties upon

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1 the execution of the guaranteed utility savings contract. The
2 qualified provider shall provide a performance ~~[bond]~~ guarantee
3 in the form of a performance bond, a cash bond, a corporate
4 guarantee or any other surety satisfactory to the governmental
5 unit and its approving agency ~~[executed by a surety company~~
6 ~~authorized to do business in this state and approved in federal~~
7 ~~circular 570 published by the United States treasury department~~
8 ~~or by the state board of finance]~~. The ~~[bond]~~ guarantee for
9 each year shall be in an amount equal to the amount of the
10 annual guarantee given by the qualified provider in the
11 guaranteed utility savings contract. "

12 Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 84, as amended) is amended to read:

14 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
15 USE. --

16 A. Except as provided in Subsection G of Section
17 13-1-119.1 NMSA 1978, when a state agency or a local public
18 body is procuring professional services or a design and build
19 project delivery system, or when the state purchasing agent, a
20 central purchasing office or a designee of either officer makes
21 a written determination that the use of competitive sealed
22 bidding for items of tangible personal property or services is
23 either not practicable or not advantageous to the state agency
24 or a local public body, a procurement shall be effected by
25 competitive sealed proposals.

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1 B. Competitive sealed proposals may also be used
2 for contracts for construction and facility maintenance,
3 service and repairs.

4 C. Competitive qualifications-based proposals shall
5 be used for procurement of professional services of architects,
6 engineers, landscape architects, construction managers and
7 surveyors who submit proposals pursuant to Sections 13-1-120
8 through 13-1-124 NMSA 1978.

9 D. Competitive sealed proposals shall also be used
10 for contracts for the design and installation of measures the
11 primary purpose of which is to conserve natural resources,
12 including guaranteed utility savings contracts entered into
13 pursuant to the Public Facility Energy Efficiency and Water
14 Conservation Act.

15 ~~[B.]~~ E. The governor shall appoint an advisory
16 committee to provide assistance in development of rules for the
17 implementation of this section. The advisory committee shall
18 include one representative from the New Mexico building and
19 construction trades council, American federation of labor -
20 congress for industrial organizations, and a representative of:

- 21 (1) the associated general contractors - New
- 22 Mexico building branch;
- 23 (2) the New Mexico chapter of the national
- 24 electrical contractors association;
- 25 (3) the New Mexico sheet metal contractors'

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- 1 association;
- 2 (4) the mechanical contractors association of
- 3 New Mexico;
- 4 (5) the New Mexico association of counties;
- 5 (6) the New Mexico municipal league;
- 6 (7) the [~~state board of education~~] public
- 7 education department;
- 8 (8) the construction industries commission;
- 9 (9) the Rio Grande underground contractors
- 10 association;
- 11 (10) the American subcontractors association
- 12 of New Mexico;
- 13 (11) the higher education community; and
- 14 (12) the general public, who is not associated
- 15 with the construction industry and who will serve as chair of
- 16 the committee. "

17 Section 3. A new section of the Procurement Code is
18 enacted to read:

19 "[NEW MATERIAL] CONTRACTS FOR THE DESIGN AND INSTALLATION
20 OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES.--A state
21 agency or a local public body may solicit competitive sealed
22 proposals for a contract that provides for both the design and
23 installation of measures the primary purpose of which is to
24 conserve natural resources, including guaranteed utility
25 savings contracts entered into pursuant to the Public Facility

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Energy Efficiency and Water Conservation Act. "

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